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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,325	02/17/2004	Jussi Piispanen	944-001.070-2	9454

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EXAMINER

EL HADY, NABIL M

ART UNIT	PAPER NUMBER
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2152

DATE MAILED: 07/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/781,325	Applicant(s) PIISPANEN ET AL.	
	Examiner Nabil M. El-Hady	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/26/2004</u> . | 6) <input type="checkbox"/> Other: _____ |




1. Claims 1-24 are pending in this application.
2. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code in most the pages of the specification. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.
3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 1-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,721,871, hereinafter "871". Although the conflicting claims are not identical, they are not patentably distinct from each other because both "871" and the instant application are directed to method and computer program for synchronizing data stores in a first and second devices by including in the synchronization message information about the change in the data structure.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant Admitted prior Art, hereinafter "AAPA", in reference to SyncML Initiative (including standards and specifications for SyncML, SyncML Representation protocol, and SyncML Sync Protocol, SyncML Device Management Protocol)

7. As to claim 1, AAPA discloses the invention substantially as claimed including a method for at least partially synchronizing a first data store residing on a first device and a second data store residing on a second device (spec., p1, lines 17-24), the data stores each being used for storing data as data units in folders, the folders in combination defining a data structure (folder is any container of data unit, spec., p5, lines 28-31), the method comprising the first device sending a message to the second device (spec., p6, lines 12-18); wherein information about data in the first data store is transmitted in said message (spec., p5, line 32 to p6, line 24) , and information about a change in the data structure of the first device is also transmitted in the message in an element or field of the message (spec., p6, lines 2-24; and p9, lines 21-24); and further wherein said information about data in the first data store is placed in the message in an element or field different from the element or field where the information about a change in the data structure is placed (part of the standard, SyncML Representation Protocol).

8. As to claim 15, the claim is rejected for the same reasons as claim 1 above. In addition, AAAPA discloses a device adapted for at least partially synchronizing a first data store residing on the device with a second data store residing on a second device (spec., p1, lines 17-24), the data stores each being used for storing data as data units in folders, the folders having interrelationships and so defining a data structure (folder is any container of data unit, spec., p5, lines 28-31), the device comprising: means for sending a message to the second device (spec., p6, lines 12-18); wherein information about data in the first data store transmitted in said message (spec., p5, line 32 to p6, line 24), and information about a change in the data structure the first device also transmitted the message in an element or field of the message (spec., p6, lines 2-24; and p9, lines 21-24); and further wherein said information about data in the first data store placed in the message in an element or field different from the element or field where the information about a change the data structure is placed (part of the standard, SyncML Representation Protocol).

9. As to claim 2, AAPA discloses the element or field where the information about data in the first data store is placed or the element or field where the information about a change in the data stricture is placed is a field of the message (part of the standard, SyncML Representation Protocol).

10. As to claim 3, AAPA discloses the information about data in the first data store is included in a data element of the message (spec., p7, lines 18-25; and p8, line 30 to p9, line 7).

11. As to claim 4, AAPA discloses the data element is a data element of a protocol command element (spec., p7, lines 18-25; and p9, lines 12-17).

12. As to claims 5 and 6, AAPA discloses the information about a change in the data structure is included in a non-data element of the message, and wherein the non-data element is a non-data element of a protocol command element (spec., p9, lines 12-17).

13. As to claim 7, AAPA discloses the information about a change in the data structure includes folder information (folder is defined to be any container of data unit, spec., p5, lines 28-31; and p9, lines 21-24).

14. As to claim 8, AAPA discloses a data identification element is contained in a protocol command element in the message, and the protocol command element in combination with the data identification element indicates the information about change in the data structure of the first data store (spec., p7, lines 8-14; and p9, lines 8-11).

15. As to claim 9, AAPA discloses a data identification element is included in the message and the information about change in the data structure of the first data store is provided in the data identification element (spec., p6, lines 2-24; p7, lines 8-14; and p9, lines 21-24).

16. As to claim 10, AAPA discloses the first device functions as a client in a client-server protocol and the second device as a server in the client-server protocol (spec., p1, line 17 to p2, line 9).

17. As to claim 11, AAPA discloses the first device functions as a server client-server protocol and the second device as a client in the client-server protocol, and the step of the first device sending the message is responsive to a client message from the second device and includes resolving any conflicts posed by the client message in respect to the first data store (spec., p1, line 17 to p2, line 9).

18. As to claims 12 and 20, AAPA discloses the data in the data stores are used for device management by applications hosted on the devices (spec., p2, lines 30-33; and SyncML device management protocol).

19. As to claim 13 and 21, AAPA discloses the data in the data stores are used as user data by applications hosted on the devices (spec., p1, line 31 to p2, line 9).

20. As to claim 14, a computer program product comprising a computer readable storage structure embodying computer program code thereon for execution by a computer processor, with said computer program code characterized in that includes instructions for performing the steps of the method of claim 1 is inherent in AAPA's disclosure and the corresponding sync SyncML protocol.

21. As to claim 16, AAPA discloses the device is either a wireless communication terminal or a wire line communication terminal (spec., p1, lines 17-24).

22. As to claim 17, AAPA discloses the device functions as a client in a client-server model (spec., p1, lines 17-30).

23. As to claim 18, AAPA discloses the device functions as a server in a client-server model, and further comprises means for receiving a request to synchronize from the second device, and for then sending the message in response to the request to synchronize (part of sync SyncML protocol).

24. As claim 19, AAPA discloses means for receiving the message, and wherein the device functions as a server in a client-server model and include means for resolving conflicts posed by the message (spec., p1, line 17 to p2, line 9).

25. As to claim 22, AAPA discloses a system, comprising a first device according to claim15

And also comprising the second device hosting the second data store (spec., p1, line 17 to p2, line 9).

As to claim 23, AAPA discloses the first device functions as a server in a client-server model and the second device functions as a client in the client-server model (spec., p1, line 17 to p2, line 9).

26. As to claim 24, AAPA discloses the means for sending to the second device a message is responsive to request sent by the second device to synchronize to the second device (Part of Sync SyncML protocol).

27. AAPA may not explicitly disclose and in details the field components of the message between the first and the second devices, however, it would have been obvious to one skilled in the art at the time of the invention that applicant's disclosure does not vary from the SyncML Initiative (including standards and specifications for SyncML, SyncML Representation protocol, and SyncML Sync Protocol, SyncML Device Management Protocol. Specifically applicant discloses in p9, lines 21-24 that communicating changes in a directory structure is not problematic if the same application takes care of handling the data and handling the communication according to a synchronization protocol. At least it is obvious that applicant did not clearly point out the patentable novelty, which he or she thinks the claims present in view of the state of the art disclosed by the references cited, or the objections made.

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure


Arbo et al. (US 2004/0093342) ; Kadyk et al. (US 2002/0099727); Ferrat et al. (US 2005/0055382) ; Hoyle (US 2003/0041173) ; Hughes (US 6,480,953) ; and Choquier et al. (US 6,697,805).

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nabil M. El-Hady whose telephone number is (571) 272-3963. The examiner can normally be reached on 9:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 12, 2005



Nabil El-Hady, Ph.D, M.B.A.
Primary Patent Examiner
Art Unit 2152